

AMENDED IN SENATE AUGUST 23, 2004

AMENDED IN SENATE AUGUST 11, 2004

AMENDED IN SENATE AUGUST 9, 2004

AMENDED IN SENATE JUNE 29, 2004

AMENDED IN SENATE MAY 26, 2004

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1155**

**Introduced by Assembly Member Liu**

February 21, 2003

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An act to amend Sections 2342.5 and 2850 of, and to add Section 2344 to, the Probate Code, relating to conservators and guardians.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1155, as amended, Liu. Conservators and guardians: educational requirements.

Existing law defines private professional conservators and private professional guardians and requires them to file specified information with the courts and to provide a specified declaration to a statewide registry. Existing law permits a person authorized by nonprofit, private entities to perform conservatorship functions to satisfy certain filing requirements a specified way. Existing law prohibits a court from appointing these guardians and conservators unless they are registered. A guardian or conservator who signs a declaration, as described above, that asserts the truth of any material matter which he or she knows to

be false is guilty of a misdemeanor. Existing law establishes the Judicial Council and requires it to adopt rules relating to the administration of courts.

This bill would require the Judicial Council, on or before January 1, 2006, to adopt a rule of court that specifies the qualifications of private professional conservators and guardians, including certain educational requirements. The bill would require the Judicial Council to consult with specified parties in formulating the rule, and would permit the Judicial Council to include provisions waiving the requirements in cases of undue hardship. The bill would require private professional conservators and private professional guardians, other than persons who are appointed as a guardian of the person, as specified, to comply with these Judicial Council requirements, and would prohibit these guardians and conservators from registering with the Statewide Registry if they fail to fulfill these educational requirements. The bill would specify that a private professional conservator authorized by a nonprofit, private entity to perform conservatorship functions, as described above, is required to fulfill the educational requirements established by the Judicial Council for these conservators.

By changing the definition of a crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*This bill would incorporate additional changes in Section 2850 of the Probate Code proposed by SB 1248 that would become operative only if SB 1248 and this bill are both chaptered and become effective on or before January 1, 2005.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. (a) On or before January 1, 2006, the Judicial
- 2 Council shall adopt a rule of court that shall do all of the following:
- 3 (1) Specifies the qualifications of a private professional
- 4 conservator or private professional guardian.



(2) Specifies the number of hours of education in classes related to the duties of the conservator or guardian that a private professional conservator or private professional guardian must complete each year.

(3) Specifies the particular subject matter that may be included in the education required each year.

(4) Requires a private professional conservator or private professional guardian to certify to the court the completion of the yearly specified hours of education.

(b) In formulating the rule required by this section:

(1) The Judicial Council shall consult with interested parties, including, but not limited to, the Professional Fiduciary Association of California, the California Bar Association, the National Guardianship Association, and the Association of Professional Geriatric Care Managers.

(2) The Judicial Council may include provisions that allow courts to waive the educational requirements in individual cases when compliance would constitute an undue hardship.

(c) In formulating the rule described by this section, the Judicial Council is not required to include provisions regarding the qualifications or educational requirements of an individual who is appointed by the court pursuant to Section 1514 as a guardian of the person only.

SEC. 2. Section 2342.5 of the Probate Code is amended to read:

2342.5. (a) Notwithstanding Section 2342, all natural persons who are authorized by a private entity, which is exempt from federal income taxation pursuant to Section 501(C)(3) of the Internal Revenue Code or is exempt from state taxes pursuant to Sections 23701 and 23701d of the Revenue and Taxation Code, to perform the functions of a conservator may elect to annually file a statement required by subdivision (a) of Section 2342 only with the clerk of the court of the county in which the private entity has its principal place of business if all of the following requirements are met:

(1) The private entity provides conservatorship services to 10 or more conservatees with assets of less than twenty thousand dollars (\$20,000) each.

(2) At least 40 percent of the total number of conservatees served by the private entity in the state have assets of less than twenty thousand dollars (\$20,000) each.

(3) The total annual fees received by the private entity for providing conservatorship services do not exceed 5 percent of the total assets of all the conservatees served by the private entity.

Only the clerk of the court and superior court of the county in which this statement is filed shall be required to comply with the background check requirements of Section 2342 for this statement.

(b) Upon filing of a petition for appointment, a private professional conservator described in subdivision (a) shall state that he or she is a private professional conservator and the name of the county in which the information required by Section 2342 is on file.

(c) A private professional conservator described in subdivision (a) shall meet the educational requirements generally established by the Judicial Council for private professional conservators.

SEC. 3. Section 2344 is added to the Probate Code, to read:

2344. (a) A private professional conservator or a private professional guardian shall meet the requirements for education and experience established by the Judicial Council prior to appointment as conservator or guardian.

(b) A private professional conservator or private professional guardian that fails to fulfill the educational requirements established by the Judicial Council for appointment as a private professional conservator or a private professional guardian may not register with the Statewide Registry.

(c) This section does not apply to an individual who is appointed by the court pursuant to Section 1514 as a guardian of the person only.

SEC. 4. Section 2850 of the Probate Code is amended to read:

2850. (a) The Department of Justice shall maintain a Statewide Registry and shall make all information in the registry available to the court for any purpose, but shall otherwise be kept confidential. On request, the registry may disclose to the public whether an individual is or is not registered with the Statewide Registry. Except as otherwise provided in Section 2854, all persons who wish to serve as a conservator, guardian, or trustee or who are currently serving as a conservator, guardian, or trustee

1 shall register with the Statewide Registry and shall reregister every  
2 three years thereafter. “Registration” means the filing of a  
3 declaration pursuant to subdivision (b).

4 (b) All conservators, guardians, and trustees required to file  
5 information with the clerk of the court pursuant to Section 2340  
6 or required to register pursuant to this chapter shall file a signed  
7 declaration with the Statewide Registry. A person who signs a  
8 declaration pursuant to this subdivision asserting the truth of any  
9 material matter which he or she knows to be false is guilty of a  
10 misdemeanor punishable by imprisonment for up to one year in a  
11 county jail, or a fine of not more than two thousand dollars  
12 (\$2,000), or both that fine and imprisonment. The declaration shall  
13 contain the following information:

14 (1) Full name.

15 (2) Professional name, if different from (1).

16 (3) Business address.

17 (4) Business telephone number or numbers.

18 (5) His or her educational background and professional  
19 experience, including verification of any college or graduate  
20 degree claimed.

21 (6) The names of the conservator’s current conservatees, the  
22 guardian’s current wards, or the current trusts administered by the  
23 trustee.

24 (7) The aggregate dollar value of all assets currently under the  
25 conservator’s, guardian’s, or trustee’s supervision.

26 (8) Whether he or she has ever been removed for cause or  
27 resigned as conservator, guardian, or trustee in a specific case, the  
28 circumstances of that removal or resignation, and the case names,  
29 court locations, and case numbers.

30 (9) In the case of a private professional conservator or a private  
31 professional guardian, compliance with the educational  
32 requirements established by the Judicial Council for private  
33 professional conservators and private professional guardians.

34 (c) On request, the registry may disclose to a member of the  
35 public the educational background and professional experience of  
36 a conservator, guardian, or trustee registered with the Statewide  
37 Registry.

38 (d) The Department of Justice may charge a reasonable fee to  
39 persons registering and reregistering with the Statewide Registry

1 for the cost of that registration. The Department of Justice shall  
2 issue a certificate of registration to each registrant.

3 (e) Each court clerk shall forward a copy of any complaint filed  
4 with that court, and found to be meritorious by that court, against  
5 a conservator, guardian, or trustee in his or her capacity as a  
6 conservator, guardian, or trustee for inclusion in the Statewide  
7 Registry. The Statewide Registry shall place any copies of those  
8 complaints in the file of that conservator, guardian, or trustee. No  
9 anonymous complaint may be considered pursuant to this section.

10 ~~SEC. 5.~~

11 *SEC. 4.5. Section 2850 of the Probate Code is amended to*  
12 *read:*

13 2850. (a) (1) The Department of Justice shall maintain a  
14 Statewide Registry and shall make all information in the registry  
15 available to the court for any purpose, but shall otherwise ~~be kept~~  
16 *keep this information confidential, except as provided in this*  
17 *section.*

18 (2) (A) On request, the registry ~~may~~ shall disclose to the  
19 public ~~whether~~ the following:

20 (i) Whether an individual is or is not registered with the  
21 Statewide Registry.

22 (ii) Whether the Statewide Registry contains any information  
23 filed pursuant to subdivision (d) for a specific individual regarding  
24 his or her duties as a conservator, guardian, or trustee.

25 (iii) The educational background and professional experience  
26 of an individual registered with the Statewide Registry.

27 (B) Upon written request by a member of the public, the registry  
28 shall provide access to any information filed with the registry  
29 pursuant to subdivision (d) regarding a conservator, guardian, or  
30 trustee.

31 (3) Except as otherwise provided in Section 2854, all persons  
32 who wish to serve as a conservator, guardian, or trustee or who are  
33 currently serving as a conservator, guardian, or trustee shall  
34 register with the Statewide Registry and shall reregister every  
35 three years thereafter. "Registration" means the filing of a  
36 declaration pursuant to subdivision (b).

37 (b) All conservators, guardians, and trustees required to file  
38 information with the clerk of the court pursuant to Section 2340  
39 or required to register pursuant to this chapter shall file a signed  
40 declaration with the Statewide Registry. A person who signs a

1 declaration pursuant to this subdivision asserting the truth of any  
2 material matter which he or she knows to be false is guilty of a  
3 misdemeanor punishable by imprisonment for up to one year in a  
4 county jail, or a fine of not more than two thousand dollars  
5 (\$2,000), or both that fine and imprisonment. The declaration shall  
6 contain the following information:

7 (1) Full name.

8 (2) Professional name, if different from *paragraph* (1).

9 (3) Business address.

10 (4) Business telephone number or numbers.

11 (5) His or her educational background and professional  
12 experience, including verification of any college or graduate  
13 degree claimed.

14 (6) The names of the conservator's current conservatees, the  
15 guardian's current wards, or the current trusts administered by the  
16 trustee.

17 (7) The aggregate dollar value of all assets currently under the  
18 conservator's, guardian's, or trustee's supervision.

19 (8) Whether he or she has ever been removed for cause or  
20 resigned as conservator, guardian, or trustee in a specific case, the  
21 circumstances of that removal or resignation, and the case names,  
22 court locations, and case numbers.

23 (9) *In the case of a private professional conservator or a private*  
24 *professional guardian, compliance with the educational*  
25 *requirements established by the Judicial Council for private*  
26 *professional conservators and private professional guardians.*

27 ~~(c) On request, the registry may disclose to a member of the~~  
28 ~~public the educational background and professional experience of~~  
29 ~~a conservator, guardian, or trustee registered with the Statewide~~  
30 ~~Registry.~~

31 ~~(d)~~ The Department of Justice may charge a reasonable fee to  
32 persons registering and ~~re-registering~~ *reregistering* with the  
33 Statewide Registry for the cost of that registration. The  
34 Department of Justice shall issue a certificate of registration to  
35 each registrant.

36 ~~(e) Each~~

37 *(d) If a court makes a finding that a conservator, guardian, or*  
38 *trustee has not properly performed the duties of a conservator,*  
39 *guardian, or trustee, and that finding results in an order for a*  
40 *surcharge for other than nominal damages or for removal of the*



1 conservator, guardian, or trustee, the court clerk shall forward a  
2 copy of ~~any complaint filed with that court, and found to be~~  
3 ~~meritorious by that court, against a conservator, guardian, or~~  
4 ~~trustee in his or her capacity as a conservator, guardian, or trustee~~  
5 ~~for inclusion in the Statewide Registry. The Statewide Registry~~  
6 ~~shall place any copies of those complaints~~ the court's findings and  
7 order to the Statewide Registry, which shall include this  
8 information in the file of that conservator, guardian, or trustee. ~~No~~  
9 ~~anonymous complaint may be considered pursuant to this section.~~

10 SEC. 5. Section 4.5 of this bill incorporates amendments to  
11 Section 2850 of the Probate Code proposed by both this bill and  
12 SB 1248. It shall only become operative if (1) both bills are enacted  
13 and become effective on or before January 1, 2005, (2) each bill  
14 amends Section 2850 of the Probate Code, and (3) this bill is  
15 enacted after SB 1248, in which case Section 4 of this bill shall not  
16 become operative.

17 SEC. 6. No reimbursement is required by this act pursuant to  
18 Section 6 of Article XIII B of the California Constitution because  
19 the only costs that may be incurred by a local agency or school  
20 district will be incurred because this act creates a new crime or  
21 infraction, eliminates a crime or infraction, or changes the penalty  
22 for a crime or infraction, within the meaning of Section 17556 of  
23 the Government Code, or changes the definition of a crime within  
24 the meaning of Section 6 of Article XIII B of the California  
25 Constitution.

